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No. 82-629

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION,
Petitioner,

v.

WOLD ENGINEERING, P.C., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of North Dakota

MOTION FOR LEAVE TO FILE BRIEF OF STANDING ROCK SIOUX TRIBE, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION, AND SHOSHONE TRIBE OF THE WIND RIVER RESERVATION AS *AMICI CURIAE*

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Pursuant to Rule 36.3, the Standing Rock Sioux Tribe of North and South Dakota, the Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana, and the Shoshone Tribe of the Wind River Reservation, Wyoming move the Court for leave to file the attached brief *amicus curiae* in support of the petitioner of the above-captioned case. *Amici* requested the parties to consent to the filing of this brief. Petitioner Three Affiliated Tribes has consented, but respondent Wold Engineering has refused consent.

Amici are federally-recognized Indian tribes with established, well-organized tribal governments, including tribal court systems. They have a great interest in this case, since affirmance of the decision below would close

state court doors to Indian and Indian tribal plaintiffs. The tribes are interested, both as entities which may require access to state courts, and as governments concerned for the well-being of their members who may need to sue in state courts, in assuring that Indians are not denied access to those courts. They also have an interest in seeing that the proper balance is struck between state jurisdiction and protection of the jurisdiction and role of the tribal courts. In addition, *amicus* Standing Rock Sioux Tribe, as a North Dakota Tribe, has a direct interest in the outcome of this case.

Amici submit the attached brief in order to assist the Court in recognizing that the decision of the North Dakota Supreme Court is not required or authorized by federal law, and denies Indian plaintiffs equal protection of the laws. Since the jurisdiction of the petitioner differs from that of other Indian tribes, including some of the *amici* tribes, and since these *amici* believe this Court should be aware of the full range of interaction between state and tribal jurisdiction, *amici* request that their motion for leave to file the attached brief *amici curiae* be granted.

Respectfully submitted,

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INTEREST OF AMICI

Amici are all federally-recognized Indian tribes with established, well-organized tribal governments, including tribal court systems. They have a great interest in this case, since affirmance of the decision below would close state court doors to Indian and Indian tribal plaintiffs. The tribes are interested, both as entities which may require access to state courts, and as governments concerned for the well-being of their members who may need to sue in state courts, in assuring that Indians are not denied access to these courts. They also have an interest in seeing that the proper balance is struck between state jurisdiction and protection of the jurisdiction and

role of the tribal courts. In addition, *amicus* Standing Rock Sioux Tribe, as a North Dakota tribe, has a direct interest in the outcome of this case.

Amici submit this brief to assist the Court in recognizing that the decision of the North Dakota Supreme Court is not required or authorized by federal law, and denies plaintiffs equal protection of the laws.

SUMMARY OF ARGUMENT

The decision of the North Dakota Supreme Court, closing its courts to any suit commenced by an Indian plaintiff against a non-Indian defendant arising out of a transaction on a reservation, is contrary to a uniform and well-established body of law recognizing state court jurisdiction in these limited circumstances, and would often leave tribes and Indians without any forum to resolve such disputes. This Court has held that federal law preempts state courts from exercising jurisdiction over reservation Indians as defendants in cases arising on the reservation, but this federal policy does not foreclose state court jurisdiction over cases where an Indian or Indian tribe has voluntarily petitioned a state court as a plaintiff to resolve a dispute with a non-Indian. Exercise of state court jurisdiction in this case does not interfere with the tribal right of self-government, because—while the Tribes could have conferred jurisdiction upon their tribal court to hear this suit—they choose not do so. Even if the tribal court had had jurisdiction, concurrent state jurisdiction would present no interference with tribal self-government unless a tribal interest required exclusive tribal jurisdiction or a state court declined to give effect to a tribal court judgment in subsequent proceedings to enforce that judgment.

To the extent that state law forbids state court jurisdiction over this case, that law denies Indians equal protection and due process of law. A state may, as a matter of state policy, decline to exercise even that coercive ju-

risdiction over Indian defendants allowed by federal law. However, a state may not deny Indians civil rights and civic benefits it extends to other state citizens. The right to petition a state court to resolve a civil dispute as a voluntary plaintiff is such a civil right, an aspect of the First Amendment right to petition the government for redress of grievances. The unique status of Indian tribes under federal law gives Congress a broad power to enact legislation singling out tribal Indians. However, states have no such unique relationship with Indians and absent clear authorization by Congress, may not deny them basic civil rights and civic benefits.

ARGUMENT

I. STATE COURT JURISDICTION OF THIS CASE DOES NOT INFRINGE ON THE FEDERALLY PROTECTED RIGHT OF INDIANS TO MAKE THEIR OWN LAWS AND BE RULED BY THEM.

Contrary to a well-established and uniform body of law recognizing state court jurisdiction over such cases,[1] the

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[1] In *Felix* v. *Patrick*, 145 U.S. 317, 332 (1892), this Court already thought that right was clear and settled:

> It is scarcely necessary to say * * * that, while until this time they [the Indian plaintiffs] were not citizens of the United States, capable of suing as such in the Federal courts, the courts of Nebraska were open to them as they were to all persons irrespective of race or color.

The court reaffirmed the fact that state courts were open to Indians in *United States* v. *Candelaria*, 271 U.S. 432, 444-45 (1926), holding that an Indian pueblo could sue in state court to quiet its title to lands alleged to be within the pueblo.

Many important recent Indian cases in this Court began as suits by Indians or Indian tribes in state courts. *E.g.*, *Poafpybitty* v. *Skelly Oil Co.*, 390 U.S. 365 (1968); *McClanahan* v. *Arizona Tax Comm.*, 411 U.S. 164 (1973); *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145 (1973); *Bryan* v. *Itasca County*, 426 U.S. 373 (1976); *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue of New Mexico*, —— U.S. ——, 73 L.Ed.2d 1174 (1982). In none of those cases did this Court suggest that the state courts lacked subject

North Dakota Supreme Court has concluded that its courts are closed to any suit voluntarily commenced by an Indian plaintiff against a non-Indian to resolve a dispute arising out of a transaction on a reservation. In so doing, the court denied to the petitioner the right to sue respondent Wold Engineering in its own court—the state court of its state of residence—the one court where jurisdiction should be unimpeachable. This singular decision, if permitted to stand, would frequently leave tribes and reservation Indians without any forum to adjudicate civil disputes between themselves and non-Indians. That would occur except where (1) a federal court has jurisdiction over the case, or (2) the tribe has authorized its own courts to adjudicate civil suits against non-Indian defendants.

The law concerning Indian reservation jurisdiction has been clarified in recent decades by decisions of this Court. These decisions have uniformly affirmed the essential role of Indian tribes as governmental entities "possessing attributes of sovereignty over both their members and their territory," *United States* v. *Mazurie*, 419 U.S. 544, 557 (1975); *Accord Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130 (1982); *United States* v. *Wheeler*, 435 U.S. 313 (1978). And the Court has repeatedly emphasized the special role of tribal courts as "appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians." *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 65 (1978) (footnote omitted); *See United States* v. *Wheeler*, 435 U.S. 313, 332 (1978)

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matter jurisdiction. Before this case, state court decisions also have uniformly allowed suits by Indians against non-Indians. *E.g.*, *Whiting* v. *Hoffine*, 294 N.W. 2d 921, 923-24 (S.D. 1980); *McCrea* v. *Busch*, 524 P.2d 781 (Mont. 1974); *Paiz* v. *Hughes*, 417 P.2d 51 (N.M. 1966); *Brown* v. *Anderson*, 160 P. 724, 726-27 (Okl. 1916); *Phillips* v. *Reynolds*, 113 N.W. 234 (Neb. 1907).

("tribal courts are important mechanisms for protecting significant tribal interests").

In like vein, the Court has invariably held that the federal policy of allowing reservation Indians to "make their own laws and be ruled by them" preempts state courts from exercising *coercive* jurisdiction over reservation Indians in suits brought *against* them by non-Indian plaintiffs concerning reservation transactions.[2] *Williams* v. *Lee*, 358 U.S. 217 (1959). In *Williams*, the Court specifically recognized a federal policy of encouraging "tribal governments and courts to become stronger and more highly organized," *id.* at 220, and held that to allow exercise of state court jurisdiction over a civil suit against an Indian defendant concerning a debt incurred on the reservation would undermine the authority of the tribal courts to adjudicate the dispute, which was clearly within its jurisdiction. *See also Fisher* v. *District Court*, 424 U.S. 382, 387-88 (1976) (state court jurisdiction over an adoption proceeding involving only reservation Indians would "create a substantial risk of conflicting adjudications * * * and would cause a corresponding decline in the authority of the Tribal Court").

While federal law thus precludes making Indians *involuntary* parties to a state court proceeding involving an on-reservation transaction, this policy does not foreclose state court jurisdiction where an Indian tribe or individual has *voluntarily* petitioned a state court as plaintiff to resolve a dispute with a non-Indian. In such a case, no Indian is haled before the state court. No Indian is subjected to rules of conduct or duties created by

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[2] Of course, states may exercise coercive jurisdiction in situations where Congress has provided for such state jurisdiction. *E.g.*, Public Law 280, 25 U.S.C. 1321 *et seq.* (civil and criminal jurisdiction), see *Washington* v. *Yakima Indian Nation*, 439 U.S. 463 (1979), or 18 U.S.C. 1161 (regulatory jurisdiction over liquor sales), see *Rice* v. *Rehner*, —— U.S. ——, 52 U.S.L.W. 5141 (July 1, 1983).

state law. No Indian is subject to judgment.[3] The *coercive* power of the state is imposed only on the non-Indian defendant, and the power of the state over non-Indians in this context has always been clear. *See Montana Catholic Missions* v. *Missoula County*, 200 U.S. 118 (1906); *Wagoner* v. *Evans*, 170 U.S. 588 (1898); *cf. Draper* v. *United States*, 164 U.S. 240 (1896); *United States* v. *McBratney*, 104 U.S. 621 (1882); *Arizona* v. *San Carlos Apache Tribe*, —— U.S. ——, 51 U.S.L.W. 5095, 5099-5100 (July 1, 1983). For these reasons, this Court has always made it clear in cases denying state courts and regulatory agencies coercive jurisdiction over tribal Indians engaged in reservation transactions that state courts *do* have jurisdiction to adjudicate controversies between Indians and non-Indians that are voluntarily submitted to them by the Indian party to the transaction. *E.g.*, *McClanahan* v. *Arizona Tax Commission*, 411 U.S. 164, 171-173 (1973); *Williams* v. *Lee*, 358 U.S. 217, 219-220 (1959); *See Warren Trading Post Co.* v. *Arizona Tax Commission*, 380 U.S. 685, 687 n.3 (1965).

This general principle remains a sound rule of law: state courts should exercise jurisdiction over such cases except where state court adjudication is "preempted by federal law"[4] or would interfere with the federally-

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[3] *Williams* v. *Lee*, *supra*, would presumably bar affirmative relief against an Indian plaintiff on a counterclaim larger than or not related to the plaintiff's claim. That issue is not presented in this case, although a counterclaim was asserted, because the counterclaim was much smaller than the main claim, and thus was in the nature of a set off. In any event, when plaintiff is an Indian tribe, as opposed to an individual, counterclaims in excess of the plaintiff's claim are barred by tribal sovereign immunity. *United States* v. *United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512-513 (1940); *Jicarilla Apache Tribe* v. *Andrus*, 687 F.2d 1324, 1344-45 (10th Cir. 1982).

[4] The United States and petitioner have demonstrated in their briefs there is no preemption here. We agree that the reliance of the North Dakota Supreme Court on "Public Law 280," 25 U.S.C. 1321 *et seq.*, as authority for the denial of state court jurisdiction is misplaced.

protected right of reservation Indians to "make their own laws and be ruled by them." *E.g.*, *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136, 142 (1980).

Exercise of state court jurisdiction over the present case could not possibly interfere with the federal policy of allowing Indians to exercise tribal self-government on the Fort Berthold Reservation. In this case, the *Tribes themselves* commenced the suit in state court. More importantly, at the time this suit was filed, the Fort Berthold Tribal Court was not authorized by the Tribes to exercise coerceive civil jurisdiction over non-consenting, non-Indian defendants.[5] Consequently, state jurisdiction could not conceivably interfere with the functioning of the tribal court or with any tribal policy.[6]

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[5] Fort Berthold Tribal Code, Chapter 2, Section 1(a), quoted in the petition for certiorari. According to the brief of the United States as amicus curiae in support of the petition for certiorari, the code was, subsequent to the North Dakota Supreme Court's decision in this case, amended to extend the court's jurisdiction.

[6] The Tribes could clearly have conferred jurisdiction on their tribal court to adjudicate controversies between themselves and non-Indians transacting business on the Reservation.

Civil jurisdiction of tribes over non-Indians was upheld in *Washington* v. *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980), where this Court held that an Indian tribe could tax non-Indian purchasers of cigarettes on the reservation. The Court emphasized that the executive branch had "consistently recognized that Indian tribes possess a broad measure of civil jurisdiction over the activities of non-Indians on Indian reservation lands in which the tribes have a significant interest." *Id.* at 152. The *Colville* case, and jurisdiction of Indian tribes to tax non-Indian activities on reservation trust lands, were reaffirmed in *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130 (1982). There, the Court rejected an argument that taxing power was dependent on the power to exclude non-Indians from trust lands, describing it as "an essential attribute of Indian sovereignty" and "a necessary instrument of self-government and territorial management." *Id.* at 137.

Even *Montana* v. *United States*, 450 U.S. 544 (1981), which overturned a tribal ordinance regulating hunting and fishing by non-Indians on fee land within a reservation, reaffirmed substantial

Many tribes, like the Fort Berthold tribes and most tribes which have Courts of Indian Offenses—including *amici* Shoshone Tribe [7]—have chosen not to confer jurisdiction on their tribal courts to resolve civil disputes between Indian plaintiffs and non-consenting, non-Indian defendants.[8] This is an appropriate tribal policy. For while federal law encourages the development of tribal courts and other governmental institutions, it does not *require* tribes to assert tribal court jurisdiction to the fullest extent allowed by law. Indeed, the Bureau of Indian Affairs has not allowed the exercise of jurisdiction in cases like this by Courts of Indian Offenses maintained by it on Indian reservations.[9] Where tribal courts do

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tribal jurisdiction over non-Indian activities. There, the Court stated that tribes may regulate non-Indian activities on trust land, *id.* at 557, and in some circumstances, even on reservation fee land, *id.* at 566, and that a "tribe may regulate, through taxation, licensing *or other means*, the activities of non members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements." *Id.* at 565 (emphasis added).

The above cases are all tax or regulatory cases, but their reasoning and their language compel the conclusion that the Tribes can assert civil jurisdiction over private causes of action between Indian plaintiffs and non-Indian defendants which arise on the reservation or out of consensual relationships with Indians. *See McClanahan* v. *Arizona Tax Commission*, 411 U.S. 164, 178 (1978) (suggesting that civil or criminal jurisdiction is a necessary condition to imposing and collecting a tax).

[7] See 25 C.F.R. 11.1(a)(4).

[8] Other tribes, while granting jurisdiction over such cases, have chosen not to adopt a "long arm" jurisdictional ordinance. In that case a non-Indian could not be sued in tribal court unless he could be served on the reservation.

[9] "The Court of Indian Offenses shall have jurisdiction of all suits wherein the defendant is a member of the tribe or tribes within their jurisdiction, and of all other suits between members

not exercise jurisdiction over cases with involuntary non-Indian defendants, there is no possible collision between state court jurisdiction to adjudicate such cases and tribal powers of self-government. And unless a federal court should have diversity [10] or federal question jurisdiction over the case, *no court* could resolve the dispute in these circumstances if the decision below is allowed to stand.

Other tribes, such as *amici* Standing Rock Sioux Tribe and the Assiniboine and Sioux Tribes of the Fort Peck Reservation, have authorized their tribal courts to exercise jurisdiction where one party to the action is an Indian or a tribally or Indian owned business and the transaction or occurrence giving rise to the cause of action arises on the reservation or under tribal law.[11] In such circumstances, the tribal court would provide a forum to resolve disputes like the present case. Even here, however, *amici* submit that the exercise of concurrent state court jurisdiction over a case brought by an Indian plaintiff would not necessarily interfere with the federal policy of tribal self-government. Infringement on the right of reservation Indians to exercise powers of self-government would occur only if a tribal interest required *exclusive* tribal court jurisdiction over a particular kind of reservation dispute between Indians and

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and nonmembers which are brought before the courts by stipulation of both parties." 25 C.F.R. 11.22.

A tribe which has a Court of Indian Offenses may alter its jurisdiction by tribal ordinance. *See* 25 C.F.R. 11.1(e). *Amici* Shoshone Tribe has not altered the jurisdiction of the Court of Indian Offenses at the Wind River Reservation.

[10] Indeed, since a federal court exercising diversity jurisdiction sits as a court of the state, it is doubtful that a federal court could take jurisdiction over a case merely because of diversity of citizenship where a state court would not. *Hot Oil Service, Inc.* v. *Hall*, 366 F.2d 295 (9th Cir. 1966); *Littell* v. *Nakai*, 344 F.2d 486 (9th Cir. 1965); *but see Poitra* v. *Demarrias*, 502 F.2d 23 (8th Cir. 1974).

[11] Standing Rock Sioux Tribe, Code of Justice, Section 1-107; Fort Peck Comprehensive Code of Justice, Chapter 1, Section 107.

non-Indians, and where a suit were nonetheless brought in state court. Similarly, tribal governmental processes might be infringed if a tribal court exercised jurisdiction properly conferred on it to adjudicate a controversy and a state court thereafter declined to apply ordinary rules of comity[12] in a subsequent proceeding brought to enforce that judgment.

II. TO THE EXTENT THAT CHAPTER 27-19 OF THE NORTH DAKOTA CODE PRECLUDES SUITS IN STATE COURT BY INDIANS AND INDIAN TRIBES, IT UNCONSTITUTIONALLY DENIES THEM EQUAL PROTECTION AND DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT.

The Supreme Court of North Dakota relied heavily on a state statute implementing Public Law 280, 25 U.S.C. 1321 *et seq.*—North Dakota Cent. Code, Chapter 27-19—in concluding that the state courts did not have jurisdiction over this case.[13] If it is construed to deny Indian

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[12] *E.g., In re Marriage of Red Fox*, 542 F.2d 918, 920 (Or. App. 1975); *Begay* v. *Miller*, 222 P.2d 624, 628 (Ariz. 1950); *see Brown* v. *Babbitt Ford, Inc.*, 571 P.2d 689 (Ariz. App. 1977). Tribal courts have been regarded as the courts of "territories" for the purpose of provisions like 28 U.S.C. 1738, which provides that:

> The records and judicial proceedings of any court of any * * * state, territory or possession * * * shall have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of such state, territory or possession from which they are taken.

E.g., United States, ex rel. Mackey v. *Cox*, 59 U.S. (18 How.) 100, 104 (1856); *Jim* v. *CIT Financial Services Corp.*, 533 P.2d 751 (N.M. 1975); *In re Buehl*, 555 P.2d 1334, 1342-43 (Wa. 1976) (en banc); *See Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 65, n.21 (1978).

[13] The court stated that petitioners' "argument would be more convincing had the legislature of North Dakota not * * * totally disclaimed jurisdiction over civil causes of action arising on an

citizens of North Dakota voluntary access to state courts, the statute unconstitutionally denies them equal protection and due process of law.

A state may, as a matter of state law, decline to exercise coercive jurisdiction over Indians, even where such jurisdiction is allowed under federal law. For example, a state may decline to exercise jurisdiction under Public Law 280, or may exercise it selectively.[14] Similarly, notwithstanding the McCarran Amendment, 43 U.S.C. 666, a state could, as a matter of state policy, decline to adjudicate Indian reserved water rights in state courts. *See Arizona* v. *San Carlos Apache Tribe*, —— U.S. ——, 51 U.S.L.W. 5095, 5099 (July 1, 1983). In either event, a state would be giving effect to a permissible state policy of resisting incursions into tribal self-government and affairs to an even greater extent than is *required* by *federal* law.

However, a state may not deny Indians, including those retaining tribal affiliations, benefits it extends to other state citizens in a manner that denies equal protection or due process of law. Thus, Indians are constitutionally

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Indian reservation." *Three Affiliated Tribes* v. *Wold Engineering, P.C.*, 321 N.W.2d 510, 511 (N.D. 1982). The court also relied upon *In re Whiteshield*, 124 N.W. 2d 694 (N.D. 1963) where it had said:

> [B]y the amendment of Section 203 of the North Dakota Constitution in 1958, and the passage of Chapter 242 of the Session Laws of 1963 [North Dakota Cent. Code, Chapter 27-19], the people and the legislature of the State have taken affirmative action which amounts to a complete disclaimer of jurisdiction over civil causes of action which arise on an Indian reservation, except upon acceptance by the Indian citizens of the reservation * * *.

Three Affiliated Tribes, supra at 512, quoting *In re Whiteshield, supra*, at 696.

[14] *Washington* v. *Yakima Indian Nation*, 439 U.S. 463 (1979). Even the mandatory states under P.L. 280 were consulted prior to inclusion in that statute. *Id.* at 497.

entitled to vote in state elections,[15] to run for and hold state office,[16] and to receive public services and benefits.[17]

In the same vein, the right to petition a state court to resolve a civil dispute as a voluntary plaintiff cannot be denied to tribal Indian citizens by the state. Indeed, the right of access to courts is a civil right specifically protected by 42 U.S.C. 1981:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, *to sue, be parties*, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens * * * (emphasis added)

In construing Chapter 27-19 to deny this right to Indians, the North Dakota Supreme Court goes beyond permissible state protection of Indian self-government, and denies Indians and Indian tribes equal protection and due process. By the decision below, North Dakota is not simply refusing to exercise coercive state court jurisdiction over Indians, it is denying them *access* to its courts—an aspect of the First Amendment right to petition the government for redress of grievances[18] which Indians share with all other citizens of the state.[19]

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[15] *E.g.*, *Montoya* v. *Bolack*, 372 P.2d 387 (N.M. 1962); *Harrison* v. *Laveen*, 196 P.2d 456 (Ariz. 1948); *see Little Thunder* v. *South Dakota*, 518 F.2d 1253 (8th Cir. 1975).

[16] *E.g.*, *Yanito* v. *Barber*, 348 F.Supp. 587 (D. Utah, 1972) (three-judge court).

[17] *E.g.*, *Natonabah* v. *Board of Education*, 355 F. Supp. 716 (D.N.M. 1973) (public schools); *Acosta* v. *San Diego County*, 272 P.2d 92 (Ca. App. 1954) (welfare); *Bradley* v. *Arizona Corp. Commission*, 141 P.2d 524 (Ariz. 1943) (business license).

[18] *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U.S. 508, 510 (1972); *Bill Johnson's Restaurants, Inc.* v. *National Labor Relations Board*, —— U.S. ——, 51 U.S.L.W. 4636 (May 31, 1983).

[19] As noted *supra*, page 6, there is no doubt North Dakota would have jurisdiction over actions between non-Indians arising

The unique status of Indian tribes under federal law gives to Congress broad power to enact legislation singling out tribal Indians. *See Morton* v. *Mancari*, 417 U.S. 535, 551-53 (1974). But "States do not enjoy this same unique relationship with Indians," *Washington* v. *Yakima Indian Nation*, 439 U.S. 463, 501 (1979). Thus, absent clear authorization by Congress, discrimination in *state* laws that denies civil rights and civic benefits to Indians violates the equal protection and due process clauses.

CONCLUSION

The decision of the Supreme Court of North Dakota should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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on an Indian reservation. Only plaintiff's status as an Indian tribe distinguishes this case.